

**DEC 16 2005**

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**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

ABUNDIO OCHOA RODRIGUEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-71297

Agency No. A79-289-586

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted December 5, 2005<sup>\*\*</sup>

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Abundio Ochoa Rodriguez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' decision summarily affirming an immigration judge's ("IJ") order denying his application for cancellation of

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

removal on hardship grounds. We have jurisdiction pursuant to 8 U.S.C. § 1252.

We review for abuse of discretion an IJ's decision to deny a continuance, *Nakamoto v. Ashcroft*, 363 F.3d 874, 883 n.6 (9th Cir. 2004), and we grant the petition for review.

The IJ abused her discretion in denying Ochoa-Rodriguez's requests for a continuance because the immigration court gave Ochoa-Rodriguez less than 30 days notice that it had moved up his merits hearing by over a year, the evidence he wished to obtain regarding his U.S. citizen children may have been relevant to the hardship determination, there was no unreasonable delay on the part of the petitioner, and he had not been granted any prior continuances on his application for cancellation of removal. *See Baires v. INS*, 856 F.2d 89, 92-93 (9th Cir. 1988) (discussing factors to be considered when reviewing the denial of a continuance). Because the IJ prevented Ochoa-Rodriguez from presenting more detailed evidence in support of his claim, the case must be remanded for a new hearing. *See Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000).

**PETITION FOR REVIEW GRANTED; REMANDED.**